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SENATE BILL NO. 755

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Wampler
on January 20, 2005)

(Patron Prior to Substitute—Senator Wampler)

A *BILL to amend and reenact §§ 58.1-3819 and 58.1-3833 of the Code of Virginia, relating to local tax authority for counties; transient occupancy tax, and food and beverage tax.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3819 and 58.1-3833 of the Code of Virginia are amended and reenacted as follows:
§ 58.1-3819. Transient occupancy tax.

A. Any county, by duly adopted ordinance, may levy a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than 30 consecutive days. Such tax shall be in such amount and on such terms as the governing body may, by ordinance, prescribe. Such tax shall not exceed two percent of the amount of charge for the occupancy of any room or space occupied; however, in York County, Albemarle County, Nelson County, Mecklenburg County, Gloucester County, Spotsylvania County, Stafford County, Loudoun County, Bedford County, Cumberland County, Floyd County, King George County, ~~and~~ Prince Edward County, *Wise County, and Botetourt County*, such tax shall not exceed the rate of five percent. The revenues collected from that portion of the tax over two percent shall be designated and spent for promoting tourism, travel or business that generates tourism or travel in the locality. It is further provided that Rockbridge County, Caroline County, Dinwiddie County, Page County, Wythe County, James City County, Franklin County, Tazewell County, Augusta County, ~~and~~ Prince William County, *Patrick County, Pulaski County, and Halifax County* may levy a transient occupancy tax not to exceed five percent, and any excess over two percent shall be designated and spent solely for tourism, marketing of tourism or initiatives that, as determined in consultation with the local tourism industry organizations, attract travelers to the locality and generate tourism revenues in the locality. If there are no local tourism industry organizations in the locality, the governing body shall hold a public hearing prior to making any determination relating to how to attract travelers to the locality and generate tourism revenues in the locality.

B. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days in hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms. In addition, that portion of any tax imposed hereunder in excess of two percent shall not apply to travel campgrounds in Stafford County.

C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town to levy such a transient occupancy tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax levied under this section, mutatis mutandis.

D. Any county, city or town which requires local hotel and motel businesses, or any class thereof, to collect, account for and remit to such locality a local tax imposed on the consumer, may allow such businesses a commission for such service in the form of a deduction from the tax remitted. Such commission shall be provided for by ordinance, which shall set the rate thereof, no less than three percent, not to exceed five percent of the amount of tax due and accounted for. No commission shall be allowed if the amount due was delinquent.

E. All transient occupancy tax collections shall be deemed to be held in trust for the county, city or town imposing the tax.

§ 58.1-3833. County food and beverage tax.

A. Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1, not to exceed four percent of the amount charged for such food and beverages. Such tax shall not be levied on food and beverages sold through vending machines or by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25, as well as nonprofit cafeterias in public schools, nursing homes, and hospitals. Grocery stores and convenience stores selling prepared foods ready for human consumption at a delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store selling such items.

This tax shall be levied only if the tax is approved in a referendum within the county which shall be held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on the filing of a petition signed by a number of registered voters of the county equal in number to 10 percent of the number of voters registered in the county, as appropriate on January 1 of the year in which the petition is filed with the court of such county. The clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a local meals tax, the tax shall

60 be effective in an amount and on such terms as the governing body may by ordinance prescribe. If such
61 resolution of the board of supervisors or such petition states for what projects and/or purposes the
62 revenues collected from the tax are to be used, then the question on the ballot for the referendum shall
63 include language stating for what projects and/or purposes the revenues collected from the tax are to be
64 used.

65 The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and
66 nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently
67 imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.) of this title. Collection
68 of such tax shall be in a manner prescribed by the governing body.

69 B. Notwithstanding the provisions of subsection A of this section, Roanoke County, Rockbridge
70 County, Frederick County ~~and~~, Arlington County, *Montgomery County*, and *Washington County* are
71 hereby authorized to levy a tax on food and beverages sold for human consumption by a restaurant, as
72 such term is defined in § 35.1-1 and as modified in subsection A above and subject to the same
73 exemptions, not to exceed four percent of the amount charged for such food and beverages, provided
74 that the governing body of the respective county holds a public hearing before adopting a local food and
75 beverage tax, and the governing body by unanimous vote adopts such tax by local ordinance. The tax
76 shall be effective in an amount and on such terms as the governing body may by ordinance prescribe.

77 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
78 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax
79 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax
80 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.
81 The wrongful and fraudulent use of such collections other than remittance of the same as provided by
82 law shall constitute embezzlement pursuant to § 18.2-111.

83 D. No county which has heretofore adopted an ordinance pursuant to subsection A of this section
84 shall be required to submit an amendment to its meals tax ordinance to the voters in a referendum.

85 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
86 section upon alcoholic beverages sold in factory sealed containers and purchased for off-premises
87 consumption or food purchased for human consumption as "food" is defined in the Food Stamp Act of
88 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the
89 following items: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads
90 consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

91 **2. That any transient occupancy tax lawfully being imposed by any county in excess of two**
92 **percent pursuant to subsection A of § 58.1-3819 immediately prior to and on and after July 1,**
93 **2004, is ratified retroactive to July 1, 2004; and any such county is authorized to continue to**
94 **impose such tax except as the General Assembly may alter such authority by an act passed after**
95 **July 1, 2004.**

96 **3. That any food and beverage tax lawfully being imposed by any county pursuant to subsection**
97 **B of § 58.1-3833 immediately prior to and on and after July 1, 2004, is ratified retroactive to July**
98 **1, 2004; and any such county is authorized to continue to impose such tax except as the General**
99 **Assembly may alter such authority by an act passed after July 1, 2004.**